A

Marina Bay Sands Pte Ltd v Ng Kong Seong

B

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24–73–11 OF 2013
HANIPAH FARIKULLAH J
2 SEPTEMBER 2016

C

Civil Procedure — Foreign judgments — Enforcement — Reciprocal enforcement of foreign judgments — Registration — Judgment creditor obtained ex parte order to register Singapore judgment — Judgment debtor applied to set aside judgment — Whether judgment debtor submitted to Singapore Court jurisdiction — Whether enforcement of Singapore judgment against public policy — Reciprocal Enforcement of Judgments Act 1958 s 5

D

The judgment creditor ('JC') had obtained a judgment in default against the judgment debtor ('JD') vide Republic of Singapore High Court Summons No S634 of 2013 ('the Singapore judgment') and further obtained an ex parte order ('the ex parte order') to register the Singapore judgment against the JD. In the present application, the JD vide encl 14 applied to set aside the ex parte order. The JD submitted that s 5(1)(a)(ii) of the Reciprocal Enforcement of Judgments Act 1958 ('the Act') should come into force as the JD did not receive any notice on the Singapore proceedings and that the Singapore Court did not have the jurisdiction to grant the Singapore judgment as the JD never submitted himself to the Singapore Court's jurisdiction. The JD further submitted that the Singapore judgment was based on a gaming debt and should not be allowed to be enforced in Malaysia as it was a clear breach of public policy. On the other hand, the JC submitted that the JD had expressly submitted to the jurisdiction of the court in Singapore pursuant to cl 13 of the credit agreement dated 24 September 2010 ('the credit agreement'). The JC also argued that they was not suing on any gaming debt but was availing itself to the right of reciprocity of registering a validly obtained judgment in Singapore Court as provided and allowed by Parliament through the enactment of the Act.

E

F

G

H

Held, dismissing the JD's application with costs of RM1,000:

(1) The JD had expressly submitted to the jurisdiction of the court in Singapore pursuant to cl 13 of the credit agreement. Further, to date the JD had not applied to set aside the Singapore judgment despite disputing the service of the Singapore cause papers and the Singapore High Court's jurisdiction. In fact, the proper forum to decide on the alleged issues of

I

service and jurisdiction was not the present court but the Singapore High Court. Hence, the JD was taken to have had submitted to the jurisdiction of the Singapore High Court (see paras 16–18).

(2) The registration of a foreign judgment obtained in relation to a lawful gaming transaction was not considered as against public policy. In addition, Justice Ian Chin's High Court decision in the case of *The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam* [2005] 6 MLJ 760 had been set aside by the Court of Appeal, hence, the decision in the said case holding that the UK judgment ought not to be registered on the ground of public policy was no longer good law (see para 22).

[Bahasa Malaysia summary

Pemiutang penghakiman ('JC') telah memperolehi penghakiman ingkar terhadap penghutang penghakiman ('JD') melalui Saman Mahkamah Tinggi Republik Singapura No S634 Tahun 2013 ('penghakiman Singapura') dan selanjutnya memperolehi perintah ex parte ('perintah ex parte') untuk mendaftar penghakiman Singapura terhadap JD. Dalam permohonan ini, JD melalui lampiran 14 memohon untuk mengetepikan perintah ex parte. JD berhujah bahawa s 5(1)(a)(ii) Akta Penguatkusaan Salingan Hukuman 1958 ('Akta') patut berkuat kuasa kerana JD tidak menerima apa-apa notis mengenai prosiding Singapura dan bahawa Mahkamah Singapura tidak mempunyai bidang kuasa untuk memberikan penghakiman Singapura kerana JD tidak terikat kepada bidang kuasa Mahkamah Singapura. JD selanjutnya berhujah bahawa penghakiman Singapura adalah berdasarkan atas hutang perjudian dan tidak patut dibenarkan dikuatkuasakan di Malaysia kerana ia adalah jelas melanggar polisi awam. Sebaliknya, JC berhujah bahawa JD telah secara jelas terikat kepada bidang kuasa mahkamah di Singapura berikutan klausa 13 perjanjian kredit bertarikh 24 September 2010 ('perjanjian kredit'). JC juga berhujah bahawa mereka bukan menyaman atas mana-mana hutang perjudian tetapi membenarkannya kepada hak kesalingan mendaftar penghakiman yang diperolehi secara sah di Mahkamah Singapura seperti yang diperuntukkan dan dibenarkan oleh Parlimen melalui penggubalan Akta.

Diputuskan, menolak permohonan JD dengan kos sebanyak RM1,000:

(1) JD telah secara nyata terikat kepada bidang kuasa mahkamah di Singapura berikutan klausa 13 perjanjian kredit. Selanjutnya, sehingga kini JD tidak memohon untuk mengetepikan penghakiman Singapura walaupun mempertikaikan penyerahan kertas kausa Singapura dan bidang kuasa Mahkamah Tinggi Singapura. Sebenarnya, forum betul untuk memutuskan atas isu serahan dan bidang kuasa yang didakwa bukan mahkamah ini tetapi Mahkamah Tinggi Singapura. Maka, JD dianggap telah terikat kepada bidang kuasa Mahkamah Tinggi Singapura

(lihat perenggan 16–18).

(2) Pendaftaran penghakiman asing yang diperolehi berkaitan kepada transaksi perjudian yang sah tidak dipertimbangkan sebagai bertentangan polisi awam. Selanjutnya, keputusan Mahkamah Tinggi Hakim Ian Chin dalam kes *The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam* [2005] 6 MLJ 760 telah diketepikan oleh Mahkamah Rayuan, maka, keputusan dalam kes tersebut yang memutuskan bahawa penghakiman UK tidak patut didaftarkan atas alasan polisi awam bukan lagi undang-undang baik (lihat perenggan 22).]

Notes

For cases on enforcement, see 2(2) *Mallal's Digest* (5th Ed, 2015) paras 3589–3592.

Cases referred to

Aspinall Curzon Ltd, The v Khoo Teng Hock [1991] 2 MLJ 484, HC (refd)
Chan Hak Foon v Sutera Harbour Sdn Bhd & Anor [2008] MLJU 959; [2010] 9 CLJ 995, HC (refd)
Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors [1997] 2 SLR 496, HC (refd)
International Factors Leasing Pte Ltd v Winds Cruises Pte Ltd & Ors [1999] 4 MLJ 165, HC (refd)
Jupiters Ltd (trading as Conrad International Treasury Casino) v Gan Kok Beng & Anor [2007] 7 MLJ 228, HC (refd)
Malayan Banking Berhad v Ng Man Heng [2005] 1 MLJ 470, HC (refd)
Ritz Hotel Casino Ltd & Anor, The v Datuk Seri Osu Haji Sukam [2005] 6 MLJ 760, HC (not folld)
United Overseas Bank Ltd v Wong Hai Ong [1999] 1 MLJ 474, HC (refd)

Legislation referred to

Reciprocal Enforcement of Judgments Act 1958 s 5(1)(a)(ii), (1)(a)(iii), (2)

Aw Ee Va (Skrine) for the judgment creditor.
Afdhilani bt Jusoh @ Alias (Dennis Nik & Wong) for the judgment debtor.
Fatin Azimah bt Abdul Aziz (Federal Counsel, Attorney General's Chambers) for the first respondent.

Hanipah Farikullah J:

INTRODUCTION

[1] Vide encl (14), the judgment debtor ('JD') had filed an application for extension of time and to set aside registration of the judgment of the High Court of the Republic of Singapore dated 29 October 2013 ('Singapore judgment').

THE BACKGROUND FACTS

[2] The judgment creditor ('JC') had obtained a judgment in default dated 29 October 2013 vide Republic of Singapore High Court Summons No S634 of 2013 ('Singapore judgment').

[3] Subsequently, the JC had obtained an ex parte order dated 19 December 2013 to register the Singapore judgment against the JD.

[4] The JD now applies for the order dated 19 December 2013 to be set aside.

THE JD SUBMISSION

[5] In support of its contention to set aside the Singapore judgment, in gist the JD submitted as follows.

[6] The JD had no knowledge when the Singapore judgment was obtained and neither the process of the proceeding initiated to obtain the said Singapore judgment was informed to the JD. The JD was only aware of the Singapore judgment when the JD conducted a CTOS search and found out that a bankruptcy proceeding had been initiated against the JD based on the said Singapore judgment and subsequently an ex parte order to register the said Singapore judgment has been granted against the JD on 19 December 2013. Hence, s 5(1)(a)(iii) of the Reciprocal Enforcement of Judgments Act 1958 should come into force as the JD did not receive any notice on the proceeding which had caused the JD not to appear and defend the proceedings.

[7] The JC has been put to prove that the cause papers in Singapore Court had been duly served on him. However, up until today, the JC still fail and/or refuse to provide the same to the JD. Such proof is crucial to this case in relation to the abovementioned s 5(i)(a)(iii) as to determine whether the original court (Singapore Court) had at all the jurisdiction over the JD and subsequently give

the judgment. Section 5(2) of the Reciprocal Enforcement of Judgments Act 1958 had clearly stated that there are only a few circumstances of which the original court is deemed to have jurisdiction over the JD. However, as of today none is satisfied to prove that the Singapore Court indeed has jurisdiction over the JD when the Singapore judgment was given.

[8] In support of his contention, learned counsel for the JD relied on the Singapore case of *Harrisons Trading (Peninsular) Sdn Bhd v Juta Perkara Sdn Bhd & Ors* [1997] 2 SLR 496. Warren LH Khoo J, in his judgments, inter alia, stated as follows:

> [7] I would set out my understanding of the general meaning and effect of paras (b) and (c) of s 3(2) of the Reciprocal Enforcement of Commonwealth Judgments Act which is in pari materia with Malaysia's s 5(2) of the Reciprocal Enforcement of Judgments Act 1958 before turning to the issue at hand. Under para (b), if a judgment debtor did not carry on business within the jurisdiction of the original court, or if he was not ordinarily resident there, no judgment obtained against him is registrable in this country if he did not submit to the jurisdiction of the original court. But he is taken to have submitted to the jurisdiction of the original court if he had agreed in advance to so submit, as the third defendant in this case had done by cl 14 of the guarantee. He is also taken to have submitted to jurisdiction if he voluntarily appeared in the proceedings or took a substantive part in the proceedings.
>
> [8] However, para (c) provides that even if the judgment debtor was ordinarily resident in the jurisdiction of the original court or was carrying on business there or had agreed to submit to jurisdiction, a judgment obtained against him would still not be registrable if he was not duly served with the process of the original court. But he cannot complain about having been duly served if he entered appearance or took a substantive part in the proceedings; he is taken to have waived any irregularity as to the service of the originating process. He is deemed to have submitted to jurisdiction. This, I take it, is the reason why s 3(2)(c) uses the words 'was not duly served and did not appear'.
>
> *(Judgment debtor's bundle of authorities: Tab 9).*

[9] Hence, the JD submitted that the Singapore Court did not even have the jurisdiction to grant the Singapore judgment as the JD had never submitted himself to the Singapore Court's jurisdiction by any way provided by the law and the JD had never even had knowledge about the judgment until recently.

ISSUES

[10] The issues for consideration are as follows:

(a) whether the JD has submitted to the Singapore Court jurisdiction; and

(b) whether the enforcement of Singapore judgment is against public policy.

A DECISION

Whether the JD has submitted to the Singapore Court jurisdiction

B **[11]** The affidavit evidence shows that the JC filed a writ of summons and statement of claim (amendment No 1) dated 12 July 2013 and 21 August 2013 respectively against the JD in the High Court of the Republic of Singapore ('Singapore High Court'). Pursuant to the Singapore Court order for service of document out of Singapore dated 13 September 2013, the Singapore Court granted leave to the JC to serve the cause papers on the JD in Malaysia.

C

[12] Consequently, the JC served the Singapore cause papers by posting the Singapore cause papers via POS Malaysia Bhd to the JD's supplied address at No 36 Batu Nilam 23A, Bandar Bukit Tinggi Klang, 41200 Selangor, Malaysia in accordance with cl 12 of the credit agreement dated 24 September 2010 entered between the JC and the JD ('credit agreement') and filed the memorandum of service on 23 October 2013.

D

[13] The JD contended that s 5(1)(a)(ii) of the Reciprocal Enforcement of Judgments Act 1958 should come into force as the JD did not receive any notice on the Singapore proceedings and that the Singapore Court did not have the jurisdiction to grant the Singapore judgment as the JD has never submitted himself to the Singapore Court's jurisdiction by any way provided by the law.

E

F **[14]** The evidence also shows that the Singapore High Court granted leave to serve the Singapore cause papers on the JD in Malaysia and the JC subsequently served the Singapore cause papers in accordance with the agreed cl 12 of the credit agreement which states:

G

> In the event the Borrower does not pay in full to Lender any amount loaned by the Maturity Date, Lender shall be entitled to interest as provided in Clause 9 and all costs of collection including but not limited to reasonable lawyer's fees and court costs. Service of any legal action will be sufficient if by hand delivery or by mail at the address at the address listed above in addition to any other methods at any other addresses as provided by the applicable law.

H

[15] In *International Factors Leasing Pte Ltd v Winds Cruises Pte Ltd & Ors* [1999] 4 MLJ 165, the High Court states as follows:

I

> The Singapore Court has jurisdiction as there was express submission to the jurisdiction of the court in Singapore (see cl 23 of the guarantee — p 138 of encl 8 which reads:
>
> Each guarantor hereby irrevocably agrees that any legal action or proceedings against him with respect of this guarantee may be brought in the courts of Singapore and each guarantor hereby —

> (i) irrevocably submits for himself and in respect of his property and assets generally and unconditionally to the jurisdiction of the aforesaid courts; ...
>
> In any event, I am of the view that if there was any irregularity or non-conformity of the Rules of the High Court of Singapore, then the defendant ought to rectify the error by applying to Singapore court to set aside the default judgment. It is observed that the defendant had not to date done anything about this.

[16] It was correctly pointed out by learned counsel for the JC that similarly, in the present case, the JD had expressly submitted to the jurisdiction of the court in Singapore pursuant to cl 13 of the credit agreement which reads:

> Any action brought by Lender and all claims arising from or related to this Agreement including, but not limited to, any conduct of the Borrower or Lender in on or about the casino or the integrated resort or the designated site within which the integrated resort is constructed are subject to the exclusive jurisdiction of the Courts of Singapore to which the parties hereby submit and this Agreement shall be governed by the laws of Singapore without any regard to any conflicts of law principles except that any judgment obtained may be enforced in any jurisdiction chosen by the Lender.

[17] I also agreed with the JC submission that to date the JD has not applied to set aside the Singapore judgment despite disputing the service of the Singapore cause papers and the Singapore High Court's jurisdiction. In fact, the proper forum to decide on the alleged issues of service of the Singapore cause papers and the Singapore Court's jurisdiction is not this court but the Singapore High Court as seen in the *International Factors Leasing* case at p 173 as follows:

> After a careful perusal of the above-mentioned documents, it can be seen that neither the sixth defendant nor his solicitors were legally qualified to state what is the position of the law in Singapore is. The proper forum to decide on the merits of the case is not before this court but the Singapore court.

[18] Hence in my view the JD is taken to have submitted to the jurisdiction of the Singapore High Court.

Whether the enforcement of the Singapore judgment is against public policy

[19] The JD submitted that the Singapore judgment is based on a gaming debt and should not be allowed to be enforced in Malaysia as it is a clear breach of public policy and to a certain extent breaching the law and thus illegal in effect.

[20] In response, learned counsel for the JC argued that the JC is not suing on any gaming debt but is availing itself to the right of reciprocity of registering

a validly obtained judgment obtained in Singapore Court as provided and allowed by Parliament through the enactment of the Reciprocal Enforcement of Judgments Act 1958 ('the REJA').

[21] In support of his contention, learned counsel relied on the case of *United Overseas Bank Ltd v Wong Hai Ong* [1999] 1 MLJ 474 where the court held that:

> There remains the question of whether the failure to serve the foreign legal process in accordance with the said rules can be a ground for setting aside the registration of the judgment. The relevant provision would, in my view, be s 5(1)(a)(v) of the Reciprocal Enforcement of Judgments Act 1958 which permits the registration of a foreign judgment to be set aside if the enforcement of that judgment 'would be contrary to public policy in Malaysia'. It goes without saying that Malaysia's policy like that of every other country is to protect its sovereignty and to expect foreign countries to respect it. For this purpose, the said rules had been enacted for the service of foreign legal process. It would be contrary to the public policy of Malaysia to condone a breach of the said rules. Therefore, it would be contrary to public policy in Malaysia to allow the enforcement of a judgment that was obtained consequent upon a failure to observe the said rules.

[22] In this present case, I am of the view that:

(a) the registration of a foreign judgment obtained in relation to a lawful gaming transaction is not considered as against public policy and this is confirmed by numerous authorities (see *The Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 MLJ 484, *Malayan Banking Berhad v Ng Man Heng* [2005] 1 MLJ 470, *Chan Hak Foon v Sutera Harbour Sdn Bhd & Anor* [2008] MLJU 959; [2010] 9 CLJ 995 and *Jupiters Ltd (trading as Conrad International Treasury Casino) v Gan Kok Beng & Anor* [2007] 7 MLJ 228); and

(b) Justice Ian Chin J's High Court decision in *The Ritz Hotel Casino Ltd & Anor v Datuk Seri Osu Haji Sukam* [2005] 6 MLJ 760 (the '*Ritz Hotel Casino* case') has been set aside by the Court of Appeal, (not reported). This means the High Court decision in the *Ritz Hotel Casino* case holding that the UK judgment ought not to be registered on the ground of public policy is no longer good law.

CONCLUSION

[23] Based on the above reasons, the JD's application is dismissed with costs RM1,000.

Judgment debtor's application dismissed with costs of RM1,000.

Reported by Dzulqarnain Ab Fatar